

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY


(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 03 MAR 2005

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Applicant's or agent's file reference MXG-PB60199		FOR FURTHER ACTION		See Form PCT/PEA/416
International application No. PCT/EP2004/003985		International filing date (day/month/year) 08.04.2004	Priority date (day/month/year) 10.04.2003	
International Patent Classification (IPC) or national classification and IPC A61K31/4545, C07D211/32, C07D405/06, C07D401/12, C07D401/14, A61P25/28				
Applicant GLAXO GROUP LIMITED et al.				
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> sent to the applicant and to the International Bureau a total of sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>				
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>				
Date of submission of the demand 23.11.2004		Date of completion of this report 01.03.2005		
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Cortés, J Telephone No. +49 89 2399-8206		



**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/003985

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-34 as originally filed

Claims, Numbers

1-19 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:
- ☐ the entire international application,
 - ☒ claims Nos. 17
because:
 - ☒ the said international application, or the said claims Nos. 17 relate to the following subject matter which does not require an international preliminary examination (specify):
see separate sheet
 - ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
 - ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
 - ☐ no international search report has been established for the said claims Nos.
 - ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
 - ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.
 - ☐ See separate sheet for further details

**INTERNATIONAL PRELIMINARY REPORT
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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	3,4,8-19
	No: Claims	1,2,5-7
Inventive step (IS)	Yes: Claims	1-19
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-16, 18-19
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

PCT/EP2004/003985

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

Claim 17 relates to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion with regard to the industrial applicability will be formulated for this claim (Article 34(4)(a)(i) PCT).

Re Item V

Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

The following documents were cited in the International Search Report:

D1: WO 02/12214 A (ORTHO MCNEIL PHARM INC (US)) 14 February 2002 (2002-02-14)

D2: WO 02/068388 A (MERCK & CO INC (US)) 6 September 2002 (2002-09-06)

D3: WO 02/076440 A (UPJOHN CO (US)) 3 October 2002 (2002-10-03)

D4: DE 44 07 139 A (THOMAE GMBH DR K (D)) 7 September 1995 (1995-09-07)

Novelty (Article 33(2) PCT)

The compounds of the present claims 1, 2 and 5-7 overlap with the generic group disclosed in claim 1 of D4. The overlap is not a novel selection, since the structural features of said claims are disclosed in D1. The mentioned claims are therefore not novel.

The present compounds differ from the compounds in D1 and D3 in the group R1-Z and from the compounds in D2 in the group -O-R4.

Inventive Step (Article 33(3) PCT)

D1 discloses histamine H3 antagonists and can be regarded as the closest prior art. D2 and D3 disclose compounds for the treatment of Alzheimer's.

The problem of the invention was the provision of further histamine H3 antagonists for the treatment of neurological diseases such as Alzheimer's.

D2 and D3 do not disclose the alleged pharmacology, but even if a skilled person had combined e.g. D1 with D2 he would not have been prompted to provide the present compounds, since D1 does not disclose any structurally related examples (the present compounds differ from all examples in D1 not only in R1-Z but in further structural features, such as e.g. the direct link between the piperidine and the phenyl and/or the orientation of the piperidine etc.).

D3 discloses structurally related examples from which the present compounds differ only in the group R1-Z. However a skilled person faced with the above mentioned problem would not have combined D2 with D3, since none of these compounds discloses the alleged pharmacology.

The present invention is therefore based on an inventive step.